

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 907 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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KR PATEL

Versus

NK PATEL  
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Appearance:

MR DU SHAH for Petitioners

MS JYOTSNA PATEL for Respondent No.1  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 28/01/2000

ORAL JUDGEMENT

1. In a suit filed for declaration and injunction by the plaintiff - petitioner both the courts below declined to grant temporary injunction restraining the defendant respondent NO. 1 or his servant or agents from encroaching on the land adjoining road on the western

side of his plot or making any construction on the disputed property.

2. There is a reply affidavit of the respondent No.1. In the reply affidavit the defendant respondent No. 1 stated that he never encroached upon the public road as what it is alleged by the plaintiff - petitioner. He further denied the fact that the construction has been made by him on the public land by way of encroaching on the said land. He made a statement on oath that he made construction on the land which belongs to him and not on the public land as what it is alleged by the plaintiff petitioner.

3. During the course of the arguments, the learned counsel for the petitioner fairly submits that whatever construction to be put by the defendant- respondent No. 1 the same has already been completed. In the presence of this admitted position otherwise also now nothing substantial survives in this revision application. Whatever construction put by the defendant respondent NO.1 can not be ordered to be demolished at this stage by way of interim order. If ultimately the plaintiff succeeds in the suit, the court will take care of his rights and if it is found that the construction put by the defendant respondent No.1 is on Government land or public road, the Court has all the power to order for demolition thereof but no relief whatsoever now can be given to the plaintiff petitioner.

4. In view of this admitted position, in fact, this revision application has become infructuous.

5. In the result, this revision application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. In the facts of this case no order as to costs.

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zgs/-